

## DEPARTMENT OF STATE REVENUE

02-20170436.LOF

**Letter of Findings Number: 02-20170436  
Corporate Income Tax  
For Tax Years 2013-14**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Business produced sufficient documentation to support its protest that its Indiana corporate income did not increase as much as the Department originally determined. Corporate income tax will therefore be recalculated to reflect the lower amount of Indiana income.

### ISSUE

#### I. Corporate Income Tax—Calculation.

**Authority:** IC § 6-3-2-2; IC § 6-3-4-6; IC § 6-8.1-5-1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 170.

Taxpayer protests the calculation of income tax.

### STATEMENT OF FACTS

Taxpayer is an out-of-state business with operations in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had incorrectly calculated its federal charitable contributions deduction for the tax years 2013 and 2014 ("tax years"). The Department therefore corrected the calculations to increase federal income which in turn increased Indiana income. The Department issued proposed assessments for additional Indiana income tax and interest to reflect the increase of Indiana income for the tax years. Taxpayer protested a portion of the proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### I. Corporate Income Tax—Calculation.

### DISCUSSION

Taxpayer protests a portion of the Department's proposed assessment for additional Indiana income tax for the tax years 2013-14. The Department based its proposed assessments on recalculation of federal income to reflect an accurate federal income tax deduction for charitable contributions. The Department performed the recalculation because it found that Taxpayer had claimed an incorrect amount of charitable contributions on its federal income tax returns for the tax years. Taxpayer protests that, while the Department's position is correct regarding its initial federal and state income tax filings for the tax years, it has since filed amended returns to show federal charitable deductions which are now accurate.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[w]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar*,

*Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Indiana income tax is established under IC § 6-3-2-2, which states in relevant parts:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) *income from doing business in this state*;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Income from a pass through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

Taxpayer refers to I.R.C. § 170(e), which provides the federal charitable contribution deduction. Taxpayer states that, while it agrees with the Department that it initially misreported the amount of charitable contribution on its federal and state returns, it has since filed amended federal and state returns. Taxpayer has provided signed and dated copies of those amended federal and state returns.

IC § 6-3-4-6 provides:

(a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which the taxpayer has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.

(b) Each taxpayer shall notify the department of any modification as provided in subsection (c) of:

- (1) a federal income tax return filed by the taxpayer after January 1, 1978; or
- (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

(c) For purposes of subsection (b), a modification occurs on the date on which a:

- (1) taxpayer files an amended federal income tax return;
- (2) final determination is made concerning an assessment of deficiency;
- (3) final determination is made concerning a claim for a refund;
- (4) taxpayer waives the restrictions on assessment and collection of all, or any part, of an underpayment of federal income tax by signing a federal Form 870, or any other Form prescribed by the Internal Revenue Service for that purpose. For purposes of this subdivision:
  - (A) a final determination does not occur with respect to any part of the underpayment that is not covered by the waiver; and
  - (B) if the signature of an authorized representative of the Internal Revenue Service is required to execute a waiver, the date of the final determination is the date of signing by the authorized representative of the Internal Revenue Service;
- (5) taxpayer enters into a closing agreement with the Internal Revenue Service concerning the taxpayer's tax liability under Section 7121 of the Internal Revenue Code that is a final determination. The date the

- taxpayer enters into a closing agreement under this subdivision is the date the closing agreement is signed by an authorized representative of the Internal Revenue Service; or
- (6) modification or alteration in an amount of tax is otherwise made that is a final determination; for a taxable year, regardless of whether a modification results in an underpayment or overpayment of tax.
- (d) For purposes of subsection (c)(2) through (c)(6), a final determination means an action or decision by a taxpayer, the Internal Revenue Service (including the Appeals Division), the United States Tax Court, or any other United States federal court concerning any disputed tax issue that:
- (1) is final and conclusive; and
  - (2) cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law.
- (e) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

IC § 6-8.1-9-1(j) provides:

- If a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:
- (1) the date determined under subsection (a); or
  - (2) the date that is one hundred eighty (180) days after the date of the modification by the Internal Revenue Service as provided under:
    - (A) [IC 6-3-4-6\(c\)](#) and [IC 6-3-4-6\(d\)](#) (for the adjusted gross income tax); or
    - (B) [IC 6-5.5-6-6\(c\)](#) and [IC 6-5.5-6-6\(d\)](#) (for the financial institutions tax).

As part of the protest process, Taxpayer provided signed and dated copies of federal and state amended income tax returns for both 2013 and 2014. Since Taxpayer has signed, dated, and filed the amended federal and state returns, the Department agrees to accept the amended returns as filed, but due to the timing of those filings reserves the right to adjust Taxpayer's Indiana income tax for 2013 and 2014 as provided by IC § 6-3-4-6 and IC § 6-8.1-9-1(j). Therefore, the Department will adjust the proposed assessments to reflect a lower amount of Indiana corporate income tax due for 2013 and 2014 as filed by Taxpayer in its amended returns.

### FINDING

Taxpayer's protest is sustained.

*Posted: 01/31/2018 by Legislative Services Agency*  
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